



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2012-0313]

RIN 1625-AA00

Safety Zones; Annual Fireworks Events in the Captain of the Port Detroit Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

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SUMMARY: The Coast Guard proposes to amend 33 CFR 165.941 by adding three permanent safety zones within the Captain of the Port Detroit Zone. This action is necessary to provide for the safety of life and property on navigable waters during each event. This action is intended to restrict vessel traffic in portions of the Captain of the Port Detroit Zone.

DATES: Comments and related materials must be received by the Coast Guard on or before **[30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments identified by docket number USCG-2012-0313 using any one of the following methods:

(1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: 202-493-2251.

(3) Mail: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001.

(4) Hand delivery: Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail ENS Benjamin Nessia, Response Department, Marine Safety Unit Toledo, Coast Guard; telephone (419)418-6040, e-mail

[Benjamin.B.Nessia@uscg.mil](mailto:Benjamin.B.Nessia@uscg.mil). If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

## Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

### Submitting comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2012-0313), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via <http://www.regulations.gov>) or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via [www.regulations.gov](http://www.regulations.gov), it will be considered received by the Coast Guard when the comment is successfully transmitted. If you submit a comment via fax, hand delivery, or mail, it will be considered as having been received by the Coast Guard when the comment is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, type the docket number USCG-2012-0313 in the "SEARCH" box and click "SEARCH." Click on "Submit a Comment" on the line associated with this rulemaking. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

#### Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number USCG-2012-0313 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an

agreement with the Department of Transportation to use the Docket Management Facility.

#### Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008 issue of the Federal Register (73 FR 3316).

#### Public meeting

We do not now plan to hold a public meeting, but you may submit a request for one using one of the four methods specified under ADDRESSES. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

#### Background and Purpose

Currently, 33 CFR 165.941 permanently lists fifty-six permanent safety zones within the Captain of the Port Detroit Zone. Each of these fifty-six permanent safety zones corresponds to an annually recurring fireworks display. A recent survey within the Captain of the Port

Detroit Zone revealed four additional recurring events that we believe require a safety zone because these events will present dangers to the boating public. The likely combination of large numbers of inexperienced recreational boaters, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. Three of these four additional fireworks displays recur within a single month each year. The other one of these events, the Put-In-Bay Chamber of Commerce Fireworks, recurs four times a year—twice in June and twice in September. Each of these additional fireworks events typically recurs during the same week of its respective month, but the exact date and times of each of these events differs each year.

#### Discussion of Proposed Rule

To mitigate the dangers presented by these four recurring fireworks displays, the Captain of the Port Detroit has determined that four safety zones are necessary. Thus, the Coast Guard proposes to amend 33 CFR 165.941 by adding four permanent safety zones. These proposed safety zones would be enforced in the following locations and at the following times:

The proposed safety zone for the Catawba Island Club

Fireworks, Catawba Island, OH, would encompass all waters of Lake Erie within a 250-yard radius of the fireworks launch site located at position 41-34'-18.10"N, 082-51'-18.70"W (NAD 83). This proposed zone would be enforced one evening during the last week in May.

The proposed safety zone for the Put-In-Bay Chamber of Commerce Fireworks, Put-In-Bay, OH, would encompass all the waters of Lake Erie within a 1000-foot radius of the fireworks launch site located at position 41-39'-19" N, 082-48'-57" W (NAD 83). This proposed zone would be enforced one evening during the third week in June, one evening during the last week in June, one evening during the first week in September, and one evening during the second week in September.

The proposed safety zone for the Bay Point Fireworks Display, Marblehead, OH, would encompass all the waters of Lake Erie within a 250-yard radius of the fireworks launch site located at position 41°30'29.23"N, 082°43'8.45"W (NAD 83). This proposed zone would be enforced one evening during the first week in July.

The proposed safety zone for the Marysville Days Fireworks, Marysville, MI, would encompass all waters of the St. Clair River bounded by the arc of a circle with a 600-foot radius with its center in approximate position

42°54'25" N, 082°27'58" W (NAD 83). This proposed zone would be enforced one evening during the last week in June.

The Captain of the Port Detroit will use all appropriate means to notify the public when the safety zones in this proposal will be enforced. Consistent with 33 CFR 165.7(a), such means of may include, among other things, publication in the Federal Register, Broadcast Notice to Mariners, Local Notice to Mariners, or, upon request, by facsimile (fax). Also, the Captain of the Port will issue a Broadcast Notice to Mariners notifying the public if enforcement of a safety zone in this section is cancelled prematurely.

Entry into, transiting, or anchoring within each of these proposed safety zones during a period of enforcement is prohibited unless authorized by the Captain of the Port Detroit, or his designated representative. The Captain of the Port or his designated representative may be contacted via VHF Channel 16.

#### Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

#### Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this proposed rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zones established by this proposed rule would be relatively small and enforced for relatively short time. Also, each safety zone is designed to minimize its impact on navigable waters. Furthermore, each safety zone has been designed to allow vessels to transit unrestricted to portions of the waterways not affected by the safety zones. Thus, restrictions on vessel movements within any particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through each safety zone when permitted by the Captain of the Port. On the whole, the Coast Guard

expects insignificant adverse impact to mariners from the activation of these safety zones.

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: the owners and operators of vessels intending to transit or anchor in the above portions of Lake Erie and the Saint Clair River during the period that any of the proposed safety zones is being enforced.

These proposed safety zones will not have a significant economic impact on a substantial number of small entities for all of the reasons discussed in the above Regulatory Planning and Review section. If you think

that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

#### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking process. If this proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact ENS Benjamin Nessia, Response Department, Marine Safety Unit Toledo, Coast Guard; telephone (419) 418-6040, e-mail [Benjamin.B.Nessia@uscg.mil](mailto:Benjamin.B.Nessia@uscg.mil). The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

#### Collection of Information

This proposed rule would call for no new collection of

information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

#### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

#### Taking of Private Property

This proposed rule would not affect a taking of private property or otherwise have taking implications

under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

#### Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

### Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems

practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves the establishment of safety zones and thus, is categorically excluded under paragraph (34)(g) of the Instruction. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting

and record keeping requirements, Security measures,  
Waterways.

For the reasons discussed in the preamble, the Coast  
Guard proposes to amend 33 CFR Part 165 as follows:

PART 165-- REGULATED NAVIGATION AREAS AND LIMITED ACCESS  
AREAS

1. The authority citation for part 165 continues to  
read as follows:

33 U.S.C. 1231; 46 U.S.C. Chapters 701, 3306, 3703; 50  
U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5;  
Pub. L. 107-295, 116 Stat. 2064; Department of Homeland  
Security Delegation No. 0170.1.

§ 165.941 Safety Zones; Annual Fireworks Events in the  
Captain of the Port Detroit Zone

2. In § 165.941(a), add paragraphs (57) through (60)  
to read as follows:

(57) Catawba Island Club Fireworks ; Catawba Island,  
OH.

(i) Location. All waters of Lake Erie within a  
250-yard radius of the fireworks launch site located at  
position 41-34'-18.10"N, 082-51'-18.70"W (NAD 83).

(ii) Expected date. This safety zone will be enforced  
one evening during the last week in May.

(58) Put-In-Bay Chamber of Commerce Fireworks, Put-In-

Bay, OH.

(i) Location. All waters of Lake Erie within a 1000-foot radius of the fireworks launch site located at position 41-39'-19" N, 082-48'-57" W (NAD 83). This area is located in the Put-In-Bay Harbor.

(ii) Expected dates. This safety zone will be enforced one evening during the third week in June, one evening during the last week in June, one evening during the first week in September, and one evening during the second week in September.

(59) Bay Point Fireworks Display, Marblehead, OH:

(i) Location. All waters of Lake Erie within a 250-yard radius of the fireworks launch site located at position 41°30'29.23"N, 082°43'8.45"W (NAD 83).

(ii) Expected date. This safety zone will be enforced one evening during the first week in July.

(60) Marysville Days Fireworks, Marysville, MI:

(i) Location. All waters of the St. Clair River within a 600 foot radius of the fireworks launch site located on land at position 42°54'25"N, 082°27'58"W (NAD 83).

(ii) Expected date. This safety zone will be enforced one evening during the LAST week in June.

Dated: May 7, 2012

J.E. OGDEN  
Captain, U.S. Coast Guard  
Captain of the Port Detroit

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